
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/033

Judgment No.: UNDT/2020/033

Date: 4 March 2020

Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KRISTENSEN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Nicole Wynn, AAS/ALD/OHR

Nusrat Chagtai, AAS/ALD/OHR

Introduction

1. On 1 March 2018, the Applicant, a P-5 Senior Civil Affairs Officer/Field Coordinator with the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), filed an application contesting the decision not to place him on the roster of pre-approved candidates for D-1 Head of Office, Political Affairs (contested decision).

2. The reply was filed on 3 April 2018.

3. By Order No. 209 (NBI/2019) of 6 December 2019, the Tribunal, *inter alia*, ordered the Applicant to file submissions by 22 February 2020 to prove that his contractual rights were violated during the rostering/interview process. To date the Applicant, has not filed any further submissions nor has he provided the Tribunal with any reason for his failure to do so.

4. Pursuant to Order No. 209 (NBI/2019) the Respondent, on 27 December 2019, filed the DVVHV VPHQW SDQH O V FRPSOHWH FRPSDUDWL competency- EDVHG LQWHUYLHZ 5 WKH DVVHV VPHQW SDQ QRWHV IURP WKH \$SSO based interview (R6) and similar HQE assessment panel members who interviewed the Applicant, all of whom served on fixed-term or continuing appointments at the D-1 or D-2 levels and had completed competency-based interview training.

5. For the reasons below, the Tribunal dismisses the application in its entirety.

Summary of the relevant facts

6. On 19 December 2016, the Department of Field Support (DFS), Field Personnel Division (FPD) advertised a generic job opening (GJO) 71792 for D-1 Head of Office, Political Affairs (Position) for rostering purposes.¹

¹ Reply, annex 2.

Applicable law

13. Under art. 101 of the Charter of the United Nations and staff regulations 1.2(c) and 4.1, the Secretary-General has broad discretion in matters of staff selection. :K L O H W K H 7 U L E X Q D O ¶ V U R O H L V Q R W W R V X E V W Administration, the Tribunal can intervene where the Administration failed in its duty to act fairly, justly and transparently in dealing with its staff members and failed to follow its own Regulations and Rules.⁸

14. The United Nations Appeals Tribunal (UNAT) jurisprudence has settled the law that in matters of staff selection a staff member has a right to be fully and fairly considered for promotion through a competitive selection process untainted by improper motives like bias or discrimination.⁹

15. In that regard, there is always a presumption that official acts have been regularly performed. This is called a presumption of regularity. But this presumption is a rebuttable one. If the Respondent is able to even minimally show that the \$ S S H O O D Q W ¶ V F D Q G L G D W X U H Z D V J L Y H Q I X O O D Q G I D L of law stands satisfied. Thereafter, the burden of proof shifts to the Appellant who must show through clear and convincing evidence that he or she was denied a fair chance of promotion.¹⁰

16. Therefore, in reviewing the Secretary- * H Q H U D O ¶ V H [H U F L V H R I K L V G authority in matters of staff selection and promotion, the F1rs o

17. Firstly, the Applicant challenges the failure by the Administration to provide

parties to see.

21. In addition to the interview documents, the Respondent disclosed the names of the interview panel members as requested by the Applicant. However, the Applicant did not adduce any evidence to show that any of the panel members held animosity against him such as to influence the negative result awarded to him.

22. The Tribunal may review whether in arriving at a decision, the Administration was motivated by bias, prejudice or improper motive. Further, the Tribunal is empowered to review an administrative decision and determine whether relevant matters have been ignored and irrelevant matters considered in making the decision affecting a staff member ¶ terms of employment.¹⁵

23. It is, however, the staff member alleging, such as in this case, that his

could be assessed negatively for the same responses that he was previously scored highly by a different interview panel. In considering an almost similar situation, UNAT in *Nikolarakis*2016-UNAT-652 held that,

the UNDT LPSURSHUO\ UHOLHG RQ 3ORJLF' WR LQVHU assessment process that is not required under the staff selection system established under the Staff Regulations and Rules.

The UNDT clearly erred on a matter of law and exceeded its competence by deciding that the DSS/SSS management lacked discretion to require all candidates to pass the competen555.1 14()-459(b)-19(y)20()-45ndid

